

48A C.J.S. Judges § 195

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

B. Amount

1. General Considerations

§ 195. Power to fix salaries

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [22\(2\)](#), [22\(4\)](#), [22\(5\)](#)

The power to fix the salaries of judicial officers must be exercised under authority of law and may be vested in the legislature or in local authorities.

Ordinarily, the salary of a judge must be fixed and determined for the office and not for the particular incumbent.¹ The power to fix the salaries of judicial officers must be exercised under authority of law.² While the legislature may provide the compensation to be granted to judicial officers in the absence of conflict with constitutional provisions,³ it cannot do so contrary to such provisions.⁴ However, as a rule, by force of constitutional provisions, the authority to fix the amount of compensation is vested in the legislature.⁵ Occasionally, the constitution itself fixes the amount⁶ or establishes a limit beyond which compensation cannot be allowed.⁷

The authority to fix the compensation of judges who are county or city officers usually is vested in the local authorities.⁸ Of course, the local authorities cannot fix the salaries of local judges where the legislature has already done so by statute, pursuant to its authority to do so.⁹

Distinctions in salary.

Distinctions in jurisdiction and authority may justify a difference in salary between judges.¹⁰ The determination whether distinctions in salary provided by statute have a rational basis depends upon detailed factual analyses of such relevant factors as population, caseload, and cost of living in the counties under comparison.¹¹

Delegation of power.

Ordinarily, the authority granted to the legislature by the constitution to fix the compensation cannot be delegated to any other body.¹² However, within constitutional limitations, the legislature may authorize local authorities to fix the compensation of judges who are local officers¹³ or may authorize them to pay out of local funds a salary in addition to that paid by the State.¹⁴

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 N.Y.—*Benvenga v. LaGuardia*, 182 Misc. 507, 48 N.Y.S.2d 117 (Sup 1944), order aff'd, 268 A.D. 566, 52 N.Y.S.2d 767 (3d Dep't 1944), order aff'd, 294 N.Y. 526, 63 N.E.2d 88 (1945).

Ohio—*Zangerle v. State ex rel. Walther*, 115 Ohio St. 168, 4 Ohio L. Abs. 381, 152 N.E. 658 (1926).

2 Mich.—*Holmes v. State Officers Compensation Commission*, 57 Mich. App. 255, 226 N.W.2d 90 (1974).

N.Y.—*Schieffelin v. Leary*, 219 A.D. 660, 220 N.Y.S. 587 (1st Dep't 1927).

Discretion

Constitution, in granting Congress the power and duty to fix judicial compensation and in not forbidding Congress to raise that compensation from time to time, left to the sound discretion of the political branches of government the adjustment of judges' salaries as economic and other circumstances, such as inflation, higher living standards, the need for better judges, more difficult cases, and greater case load, require.

U.S.—*Atkins v. U. S.*, 214 Ct. Cl. 186, 556 F.2d 1028 (1977) (disapproved of on other grounds by, *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, 673 F.2d 425 (D.C. Cir. 1982)).

3 Fla.—*Lewis v. Mathis*, 345 So. 2d 1066 (Fla. 1977).

N.Y.—*Broome County v. Bates*, 197 Misc. 88, 95 N.Y.S.2d 248 (Sup 1950), judgment aff'd, 302 N.Y. 587, 96 N.E.2d 892 (1951).

4 Ala.—*Grayson v. Stone*, 259 Ala. 320, 66 So. 2d 438 (1953).

Ind.—*State v. Billheimer*, 178 Ind. 83, 96 N.E. 801 (1911).

5 Pa.—*Glancey v. Casey*, 447 Pa. 77, 288 A.2d 812 (1972).

Statute, charter, or ordinance fixing or authorizing fixing of salaries of judges as not encroachment on judicial power, see C.J.S., *Constitutional Law* § 225.

6 Okla.—*Bell v. Crum*, 1940 OK 413, 188 Okla. 67, 106 P.2d 518 (1940).

7 Ark.—*Gipson v. Maner*, 225 Ark. 976, 287 S.W.2d 467 (1956).

Ky.—*Barker v. Barnes*, 248 S.W.2d 901 (Ky. 1952).

8 Ky.—*City of Somerset v. Reid*, 413 S.W.2d 611 (Ky. 1967).

N.Y.—*Freund v. Hogan*, 264 N.Y. 203, 190 N.E. 348 (1934).

9 Ky.—*City of Winchester v. Payne*, 502 S.W.2d 531 (Ky. 1973).

Municipal court judges

With respect to municipal court judges' compensation, counties function solely as a legal subdivision of the State having purely ministerial functions, and the legislature's power to fix that compensation is immune from any interference or modification by county boards of supervisors or county officials, who have no choice but to pay the compensation out of county funds as ordered by the legislature.

Cal.—*Olson v. Cory*, 35 Cal. 3d 390, 197 Cal. Rptr. 843, 673 P.2d 720 (1983).

10 N.Y.—*Burke v. Crosson*, 191 A.D.2d 997, 595 N.Y.S.2d 272 (4th Dep't 1993), judgment rev'd on other grounds, 85 N.Y.2d 10, 623 N.Y.S.2d 524, 647 N.E.2d 736 (1995).

11 N.Y.—*Reagan v. Milonas*, 261 A.D.2d 949, 689 N.Y.S.2d 808 (4th Dep't 1999).

Median home values

Statistical evidence that median home values were nearly 75% higher in the county in which county court judges received higher pay provided a rational basis for the salary disparity of approximately 4% between a county court judge receiving a lower salary and his counterparts in the other county.

N.Y.—*Kelly v. Crosson*, 261 A.D.2d 951, 689 N.Y.S.2d 803 (4th Dep't 1999).

12 Tenn.—*Franks v. State*, 772 S.W.2d 428 (Tenn. 1989).

13 Fla.—*McDonald v. Roland*, 65 So. 2d 12 (Fla. 1953).

Ky.—*City of Maysville v. Greenlee*, 419 S.W.2d 551 (Ky. 1967).

14 Ga.—*Thomas v. MacNeill*, 200 Ga. 418, 37 S.E.2d 705 (1946).

W. Va.—*State ex rel. County Court of Cabell County v. Battle*, 147 W. Va. 841, 131 S.E.2d 730 (1963).